

MONTANA LEGISLATIVE HISTORY

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Chapter ¹⁰ ~~84~~ 19 ^{Sp. Sess. July} 92
Bill H 24 S _____ Original bill & history ✓ c

H. Committee on Taxation
Hearing Date(s) 7/12 ✓ c
7/16 _____ c
_____ c
_____ c
_____ c
Date Out _____ c

S. Committee on Taxation
Hearing Date(s) 7/12 ✓ c
_____ c
_____ c
_____ c

Did this bill originate in an interim committee? _____ Yes ✓ No

Committee _____

Report _____

(h) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(i) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved August 6, 1992.

CHAPTER NO. 10

[HB 24]

AN ACT REVISING THE TAXATION OF RAILROAD CAR COMPANIES; TAXING RAILROAD CAR COMPANY PROPERTY AS CLASS TWELVE PROPERTY; PROVIDING FOR TRANSITION TO THE REVISED METHOD OF TAXATION FOR TAX YEARS 1991 AND 1992; AMENDING SECTIONS 15-6-145, 15-23-101, 15-23-103, 15-23-104, 15-23-105, 15-23-201, AND 20-15-403, MCA; REPEALING SECTIONS 15-55-101, 15-55-102, 15-55-103, 15-55-104, 15-55-105, 15-55-106, 15-55-108, 15-55-109, 15-55-110, AND 15-55-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

The intent of [this act] is to ensure that the taxation of property belonging to railroad car companies is within the requirements of the Railroad Revitalization and Regulatory Reform Act of 1976.

Be it enacted by the Legislature of the State of Montana:

HB 23 INTRODUCED BY DAILY, ET AL.
25% PROPERTY TAX SURTAX ON NONRESIDENTS; PROCEEDS TO GENERAL FUND

7/08 INTRODUCED
7/08 REFERRED TO TAXATION
7/08 FISCAL NOTE REQUESTED
7/08 FIRST READING
7/10 HEARING
7/10 FISCAL NOTE RECEIVED
DIED IN COMMITTEE

HB 24 INTRODUCED BY COHEN
REVISE TAXATION OF RAILROAD CAR COMPANIES
BY REQUEST OF GOVERNOR

7/08 INTRODUCED
7/08 REFERRED TO TAXATION
7/08 FIRST READING
7/08 FISCAL NOTE REQUESTED
7/10 HEARING
7/10 FISCAL NOTE RECEIVED
7/16 FISCAL NOTE PRINTED
7/16 COMMITTEE REPORT—BILL PASSED AS AMENDED
7/16 2ND READING PASSED
7/16 3RD READING PASSED

97 0
96 0

TRANSMITTED TO SENATE
7/17 REFERRED TO TAXATION
7/17 FIRST READING
7/17 HEARING
7/17 COMMITTEE REPORT—BILL CONCURRED
7/18 2ND READING CONCURRED
7/18 3RD READING CONCURRED

32 17
33 17

RETURNED TO HOUSE
7/20 SIGNED BY SPEAKER
7/20 SIGNED BY PRESIDENT
7/20 TRANSMITTED TO GOVERNOR
8/06 SIGNED BY GOVERNOR
CHAPTER NUMBER 10

EFFECTIVE DATE: 08/06/92

HB 25 INTRODUCED BY CODY, ET AL.
TEMPORARILY PROHIBIT MOST STATE EMPLOYEE TRAVEL NOT
ABSOLUTELY NECESSARY

7/08 INTRODUCED
7/08 REFERRED TO APPROPRIATIONS
7/08 FIRST READING
7/08 FISCAL NOTE REQUESTED
7/10 HEARING
7/10 FISCAL NOTE RECEIVED
7/10 FISCAL NOTE PRINTED
7/11 COMMITTEE REPORT—BILL PASSED AS AMENDED
7/13 2ND READING PASSED AS AMENDED
7/13 3RD READING PASSED

84 14
81 17

TRANSMITTED TO SENATE
7/14 REFERRED TO FINANCE & CLAIMS
7/14 FIRST READING
7/15 HEARING
7/15 COMMITTEE REPORT—BILL CONCURRED AS AMENDED
7/15 2ND READING CONCUR AS AMENDED MOTION FAILED

24 25

1 House BILL NO. 24
2 INTRODUCED BY [Signature]
3 BY REQUEST OF THE GOVERNOR
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TAXATION
6 OF RAILROAD CAR COMPANIES; TAXING RAILROAD CAR COMPANY
7 PROPERTY AS CLASS TWELVE PROPERTY; APPROPRIATING MONEY FOR
8 THE IMPLEMENTATION OF THE REVISED METHOD OF TAXATION;
9 PROVIDING FOR TRANSITION TO THE REVISED METHOD OF TAXATION
10 FOR TAX YEARS 1991 AND 1992; AMENDING SECTIONS 15-6-145,
11 15-23-101, 15-23-103, 15-23-104, 15-23-105, 15-23-201, AND
12 20-15-403, MCA; REPEALING SECTIONS 15-55-101, 15-55-102,
13 15-55-103, 15-55-104, 15-55-105, 15-55-106, 15-55-108,
14 15-55-109, 15-55-110, AND 15-55-111, MCA; AND PROVIDING AN
15 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
16 DATE."
17

18 STATEMENT OF INTENT

19 The intent of [this act] is to ensure that the taxation
20 of property belonging to railroad car companies is within
21 the requirements of the Railroad Revitalization and
22 Regulatory Reform Act of 1976. To make the transition in
23 changing the method of assessing the property for taxation,
24 additional funding will be required. For this reason, [this
25 act] appropriates additional funds to the department of

1 revenue for fiscal year 1993.
2

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 **Section 1.** Section 15-6-145, MCA, is amended to read:

5 "15-6-145. Class twelve property -- description --
6 taxable percentage. (1) Class twelve property includes all
7 property of a railroad car company as defined in [section
8 7], all railroad transportation property as described in the
9 Railroad Revitalization and Regulatory Reform Act of 1976 as
10 it read on January 1, 1986, and all airline transportation
11 property as described in the Tax Equity and Fiscal
12 Responsibility Act of 1982 as it read on January 1, 1986.

13 (2) For the tax year beginning January 1, 1991, and for
14 each tax year thereafter, class twelve property is taxed at
15 the percentage rate "R", to be determined by the department
16 as provided in subsection (3), or 12%, whichever is less.

17 (3) $R = A/B$ where:

18 (a) A is the total statewide taxable value of all
19 commercial property, except class twelve property, as
20 commercial property is described in 15-1-101(1)(d); and

21 (b) B is the total statewide market value of all
22 commercial property, except class twelve property, as
23 commercial property is described in 15-1-101(1)(d).

24 (4) (a) For the taxable year beginning January 1, 1986,
25 and for every taxable year thereafter, the department shall

1 conduct a sales assessment ratio study of all commercial and
2 industrial real property and improvements. The study must be
3 based on:

4 (i) assessments of such property as of January 1 of the
5 year for which the study is being conducted; and

6 (ii) a statistically valid sample of sales using data
7 from realty transfer certificates filed during the same
8 taxable year or from the immediately preceding taxable year,
9 but only if a sufficient number of certificates is
10 unavailable from the current taxable year to provide a
11 statistically valid sample.

12 (b) The department shall determine the value-weighted
13 mean sales assessment ratio "M" for all such property and
14 reduce the taxable value of property described in subsection
15 (4) only, by multiplying the total statewide taxable value
16 of property described in subsection (4)(a) by "M" prior to
17 calculating "A" in subsection (3)(a).

18 (c) The adjustment referred to in subsection (4)(b)
19 will be made beginning January 1, 1986, and in each
20 subsequent tax year to equalize the railroad taxable values.

21 (5) For the purpose of complying with the Railroad
22 Revitalization and Regulatory Reform Act of 1976, as it read
23 on January 1, 1986, the rate "R" referred to in this section
24 is the equalized average tax rate generally applicable to
25 commercial and industrial property, except class twelve

1 property, as commercial property is defined in
2 15-1-101(1)(d)."

3 **Section 2.** Section 15-23-101, MCA, is amended to read:

4 "15-23-101. Properties centrally assessed. The
5 department of revenue shall centrally assess each year:

6 (1) the franchise, roadway, roadbeds, rails, rolling
7 stock, and all other operating property of railroads and
8 railroad car companies operating in more than one county in
9 the state or more than one state;

10 (2) property owned by a corporation or other person
11 operating a single and continuous property operated in more
12 than one county or more than one state, including telegraph,
13 telephone, microwave, electric power or transmission lines;
14 natural gas or oil pipelines; canals, ditches, flumes, or
15 like properties and including, if congress passes
16 legislation that allows the state to tax property owned by
17 an agency created by congress to transmit or distribute
18 electrical energy, property constructed, owned, or operated
19 by a public agency created by the congress to transmit or
20 distribute electric energy produced at privately owned
21 generating facilities (not including rural electric
22 cooperatives);

23 (3) all property of scheduled airlines;

24 (4) the net proceeds of mines and of oil and gas wells;

25 (5) the gross proceeds of coal mines; and

1 (6) property described in subsections (1) and (2) which
2 is subject to the provisions of Title 15, chapter 24, part
3 12."

4 **Section 3.** Section 15-23-103, MCA, is amended to read:

5 "15-23-103. Due date of reports and returns --
6 extensions. (1) Except as provided in subsection (2) and
7 15-23-602, each report or return described in 15-23-301,
8 15-23-402, 15-23-502, or 15-23-701 shall be delivered to the
9 department on or before March 31 each year.

10 (2) Each report or return for a natural gas or oil
11 pipeline described in 15-23-301 must be delivered to the
12 department on or before April 15 each year.

13 (3) Each report described in 15-23-201, 15-23-515, or
14 15-23-516, or [section 8] must be delivered to the
15 department before April 15 each year.

16 (4) The department may for good cause extend the time
17 for filing a return or report for not more than 30 days."

18 **Section 4.** Section 15-23-104, MCA, is amended to read:

19 "15-23-104. Failure to file -- estimate by department
20 -- penalty. (1) If any person fails to file a report or
21 return within the time established in 15-23-103 or by such
22 later date as the department may approve, the department
23 shall estimate the value of the property to have been
24 reported on the basis of the best available information. In
25 estimating the value of the net proceeds of mines, the

1 department shall proceed under 15-23-506, and in estimating
2 the value of the gross proceeds of coal mines, the
3 department shall proceed under 15-35-107. In estimating the
4 value of all other property subject to assessment under
5 parts 2 through 4 of this chapter, the department shall
6 proceed under 15-1-303. In estimating value under this
7 section, the department may subpoena a person or his agent
8 as specified in 15-1-302. An assessment pursuant to parts 5
9 through 8 of this chapter based on estimated value or
10 imputed value is subject to review under 15-1-211. Each
11 month or part of a month a report is delinquent, the
12 department shall impose and collect a \$25 penalty, the total
13 not to exceed \$200, and shall deposit such penalty to the
14 credit of the general fund. The department will also inform
15 its agents in the counties of the delinquency, and, except
16 as provided in [subsection (2)], the agents shall assess a
17 penalty of 1% of the tax due for each month or part of a
18 month the report is delinquent.

19 (2) For a delinquency in reporting under [section 8],
20 the department shall assess a penalty of 1% of the tax due
21 for each month or part of a month that the report is
22 delinquent."

23 **Section 5.** Section 15-23-105, MCA, is amended to read:

24 "15-23-105. Apportionment among counties. The
25 department shall apportion the value of property assessed

under 15-23-101, 15-23-202, or 15-23-403, other than railroad car company property, among the counties in which such property is located. Apportionment shall be on a mileage basis or on the basis of the original installed cost of the centrally assessed property located in the respective counties. If the property is of such a character that its value cannot reasonably be apportioned on the basis of mileage or on the basis of the original installed cost of the centrally assessed property located in the respective counties, the department may adopt such other method or basis of apportionment as may be just or proper."

Section 6. Section 15-23-201, MCA, is amended to read:

"15-23-201. **Assessment of railroads.** The president, secretary, or managing agent or such other officer as the department of revenue may designate of any corporation and each person or association of persons owning or operating any railroad in more than one county in this state or more than one state must on or before April 15 each year furnish the department a statement signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending December 31 immediately preceding:

(1) the whole number of miles of railroad in the state and, where the line is partly out of the state, the whole number of miles without the state and the whole number

within the state, owned or operated by such corporation, person, or association;

(2) the value of the roadway, roadbed, and rails of the whole railroad and the value of the same within the state;

(3) the width of the right-of-way;

(4) the number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railroad, including the part without the state;

(5) the number, kind, and value of rolling stock owned and operated in the state;

(6) the number, kind, and value of rolling stock used in the state but not owned by the party making the returns;

(7) the number, kind, and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns or by and upon other railroads;

(8) the whole number of sidetracks in each county, including the number of miles of track in each railroad yard in the state;

(9) the number of each kind of rolling stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof of all engines; passenger, mail, express, baggage, freight, and other cars; or property owned or leased by such corporation, person, or association;

(10) the number of sleeping and dining cars not owned by such corporation, person, or association, but used in operating the railroads of such corporation, person, or association in the state or on the line of the road without the state during each month of the year for which the return is made; also the number of miles each month the cars have been run or operated within and without the state;

(11) a description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road has once been given, no other annual description thereof is necessary unless the road has been changed. Whenever the road or any portion of the road is advertised to be sold or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad or the right-of-way for the same. If such statement is not furnished as above provided, the assessment made by the department upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12) the gross earnings of the entire road;

(13) the gross earnings of the road within the state

and, if the railroad is let to other operators, how much was derived by the lessor as rental;

(14) the cost of operating the entire road, exclusive of sinking fund, expenses of land department, and money paid to the United States;

(15) net income for such year and amount of dividend declared;

(16) capital stock authorized;

(17) capital stock paid in;

(18) funded debt;

(19) number of shares authorized;

(20) number of shares of stock issued;

(21) number, kind, and total number of miles traveled within the state by railroad cars owned by railroad car companies; and

~~(22)~~ (22) any other facts the department may require."

NEW SECTION. Section 7. Definitions. As used in [sections 7 through 13], unless the context requires otherwise, the following definitions apply:

(1) "Average levy" means the rate of taxation determined under 15-24-103.

(2) "Person" includes an individual, firm, association, company, partnership, corporation, joint-stock company, agency, syndicate, or cooperative.

(3) "Private railroad cars" means all railroad cars

1 that:

2 (a) are not owned by a railroad company operating in
3 this state;

4 (b) are used for transporting persons or freight; and

5 (c) are not otherwise taxed in this state.

6 (4) "Railroad car company" means any person, other than
7 a railroad company, engaged in operating, leasing, or
8 furnishing private railroad cars, whether or not owned by
9 that person, for the transportation of persons or freight
10 over railroad lines located wholly or partially within this
11 state.

12 NEW SECTION. Section 8. Annual report. Each railroad
13 car company shall, annually and within the time requirements
14 of 15-23-103(3) and (4), file with the department of revenue
15 a report, signed and sworn to by one of its designated
16 officers, that provides the following information as of the
17 preceding December 31:

18 (1) the name and nature of the business of the company;

19 (2) the number, kind, acquisition cost, date of
20 acquisition, and name of owner of its private railroad cars
21 used outside of the state;

22 (3) the cost of additions and betterment, special
23 equipment, racks, protective equipment, or any other
24 modification or improvement to a car since acquisition;

25 (4) the total car miles traveled, loaded and unloaded,

1 within the state during the calendar year preceding the date
2 of filing;

3 (5) the total car miles traveled, loaded and unloaded,
4 within and outside of the state during the calendar year
5 preceding the date of filing;

6 (6) the average number of miles traveled by each class
7 of car during the year;

8 (7) the description and location of real and personal
9 property that is owned by the railroad car company and that
10 is subject to taxation within this state; and

11 (8) any other facts the department may require.

12 NEW SECTION. Section 9. Assessment -- allocation --
13 taxable value. (1) The department of revenue shall assess
14 the property in the name of the railroad car company owning
15 the property unless the property is reported by another
16 person leasing or operating the property.

17 (2) The allocation of property to this state must be
18 made on the basis of the car miles traveled within the state
19 to the total car miles traveled unless the department
20 determines that a different formula should be applied.

21 (3) In determining taxable value, the department shall
22 use the percentage rate "R", as provided in 15-6-145, to
23 achieve compliance with the requirements of the federal
24 Railroad Revitalization and Regulatory Reform Act of 1976,
25 as amended.

NEW SECTION. Section 10. Determination of tax --

payment. (1) On or before the third Monday in October, the department of revenue shall compute the tax on railroad car company property by multiplying the taxable value of the property by the average levy.

(2) After determining the tax, the department shall send to the last-known address of each railroad car company subject to taxation a written notice, postage prepaid, showing the amount of taxes due for the current year and any delinquent amount for prior years. The notice must include the taxable value of the property and the average levy used to compute the tax.

(3) The tax is due and payable to the department under the provisions of 15-16-102 that pertain to time for payment, penalty, and interest for delinquent taxes. A tax not received by the department within the time requirements of 15-16-102 is delinquent.

NEW SECTION. Section 11. Deposit of taxes. All taxes, penalties, and interest collected by the department of revenue under [sections 7 through 13] must be deposited in the general fund.

NEW SECTION. Section 12. Lien -- collection actions.

(1) A tax due under [sections 7 through 13] is a lien on all real and personal property of the railroad car company to the same extent as are other taxes under 15-16-401 and

15-16-402.

(2) The department may at any time after the taxes are delinquent use the following collection actions:

(a) seizure and sale of personal property, as provided in 15-17-911, with the department having the same authority as the county treasurer;

(b) suit for collection in district court; or

(c) issuance of a warrant for distraint, as provided in Title 15, chapter 1, part 7.

(3) The use of one collection method does not prevent the department from using other collection methods.

NEW SECTION. Section 13. Transition. (1) On or before

October 30, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable as provided in [section 10].

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under

[sections 7 through 13], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable under the provisions of [section 10].

Section 14. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, ~~15-55-106~~, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103,

39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

NEW SECTION. Section 15. Appropriation. There is appropriated \$70,000 from the general fund to the department of revenue for fiscal year 1993 for the purpose of administering [this act].

NEW SECTION. Section 16. Repealer. Sections 15-55-101, 15-55-102, 15-55-103, 15-55-104, 15-55-105, 15-55-106, 15-55-108, 15-55-109, 15-55-110, and 15-55-111, MCA, are repealed.

NEW SECTION. Section 17. Codification instruction. [Sections 7 through 12] are intended to be codified as an integral part of Title 15, chapter 23, and the provisions of Title 15, chapter 23, apply to [sections 7 through 12].

NEW SECTION. Section 18. Effective date -- retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990.

1 NEW SECTION. **Section 19. Termination.** [Section 13]

2 terminates January 1, 1994.

-End-

HEARING ON HOUSE BILL 27Presentation and Opening Statement by Sponsor:

REP. DAILY, District, District 69, Butte, said the bill establishes a minimum income tax which he offers as an alternative to capping the federal deductibility. The tax liability would be determined as the greater amount of either the tax as calculated on the return or the minimum tax as established in HB 27. The minimum tax rates on a single, or married person filing separately, would range from 3% on a taxpayer earning \$15,000 to 11% on a taxpayer making \$240,000. He said the amounts and percentages could be adjusted by the Committee. The bill also includes a provision whereby corporations will pay the greater amount of a 3% minimum tax on their gross income or the 6.45% they now pay on net income. He said he would prefer limiting federal deductibility, but presents this bill as an alternative.

Proponents' Testimony:

There were no proponents.

Opponents' Testimony:

Charles Brooks, Montana Retail Association, said he opposes the bill because of the 3% corporation tax on all gross income. Traditionally, taxes have been computed based on net income. For that reason, and others, his organization opposes the bill.

Questions From Committee Members:

REP. GILBERT asked if corporations would still have to pay the 3% tax on gross income even if the corporation is broke.

REP. DAILY said he is uncomfortable with that provision, and he doesn't want to place an additional burden on businesses, but that is the way the bill is written.

Closing by Sponsor:

REP. DAILY closed by noting this is a good bill. He does not submit the bill to cause undue hardships for businesses because when jobs are lost, the whole state loses.

HEARING ON HOUSE BILL 24Presentation and Opening Statement by Sponsor:

REP. COHEN, District 3, Whitefish, said the purpose of the bill is to repeal the Freight Line Company Tax and have the companies pay the same property taxes and income taxes that other businesses in Montana pay. Freight line companies are

businesses, other than railroads, which furnish cars for hauling freight over railways. The state has been challenged under the 4R's Act on the freight license tax. DOR is proposing to tax freight cars as property in the same manner as the rolling stock of Burlington Northern or Montana Rail Link. All companies would be taxed the same, whether they are railroads, or freight line companies such as TTX. REP. COHEN said DOR feels it needs \$70,000 to implement the bill. He felt the bill would not survive scrutiny by the Appropriations Committee with that provision intact and asked that it be stricken.

Proponents' Testimony:

Dave Woodgerd, Chief Counsel, DOR, presented testimony in support of the bill (Exhibit #2) and also submitted proposed amendments (Exhibit #3).

Opponents' Testimony:

Jack Etzkorn, TTX Company, Chicago, presented his testimony in opposition to the bill (Exhibit #4).

Russ Ritter, Montana Rail Link, said his company has some serious concerns about increased record keeping and would oppose the bill on that basis.

Questions From Committee Members:

REP. GILBERT said he had heard what TTX doesn't want to pay. He asked what they would pay.

Mr. Etzkorn said TTX would prefer an add-along tax based on a fair or sound valuation which is properly allocated to the state and which provides for an equalization factor that accounts for the fact that a substantial portion of the tangible personal property within the state is exempt.

REP. GILBERT said he wanted a specific formula. He said TTX cannot expect to run their freight cars across the state for nothing.

Mr. Etzkorn replied TTX is objecting to the mileage formula as Montana is a bridge state for their car configuration. The objection to the property tax is based on an amount of tax greater than the number of cars actually in the state. He suggested the Wyoming statute, which provides for an allocation based upon the number of cars necessary to generate the miles within the state, might be more appropriate. It is terminology which is used in many other states.

REP. GILBERT asked if TTX had attempted to work with DOR to establish a rate before they filed suit.

Mr. Etzkorn said they had discussions with DOR in December, 1991,

and when those discussions were fruitless, they went to the federal government.

REP. GILBERT asked Mr. Woodgerd if TTX and other companies had been informed of the pending legislation.

Mr. Woodgerd replied that DOR had called Mr. Etzkorn and told him the legislation was pending.

REP. COHEN asked if TTX had Montana counsel and if they had filed with the Commissioner on Political Practices as a lobbyist.

Mr. Etzkorn said TTX Montana counsel is Robert Lee. He said he had not filed as a lobbyist, but would certainly do so if it was necessary.

REP. COHEN said he hoped both Mr. Lee and Mr. Etzkorn would work with the subcommittee and DOR to try to resolve the problem.

Mr. Etzkorn replied that he would be most happy to work with the subcommittee.

Closing by Sponsor:

REP. COHEN closed saying this is a very complicated issue. He would like to work it out because of the pending litigation and hoped the subcommittee could arrive at a fair tax settlement procedure.

HEARING ON HOUSE BILL 17

Presentation and Opening Statement by Sponsor:

REP. GALVIN, District 40, Great Falls, said the bill increases the lodging tax from 4% to 9% with proceeds being allocated to the General Fund and local governments. The original 4% of the bed tax would go to tourism promotion, 80% of the increase would go to the General Fund, and 20% to cities and towns to help reduce local taxes. The fiscal note indicates approximately \$6.4 million would be generated for state government, and \$1.4 million for cities and towns.

Proponents' Testimony:

Chuck Stearns, Finance Director and City Clerk, Missoula, presented his testimony in support of the bill (Exhibit #5).

REP. COHEN, District 3, Whitefish, said his area has benefitted greatly from the bed tax. Rooms are full in the Flathead area for six to eight weeks at a time. He feels tourism promotion, funded by the bed tax, is working well but it should not grow in an uncontrolled manner. He said local governments should get more than 20% as small towns such as Whitefish need an offset for

HOUSE BILL 24

EXHIBIT 2
DATE 7/10/92
HB HB 24

Department of Revenue Explanation
July 9, 1992

Purpose

The purpose of this bill is to repeal the Freight Line Company Tax and have the companies pay the same property taxes and income taxes that other businesses in Montana pay. Freight line companies are businesses, other than railroads, which furnish cars for hauling freight over railways.

Reason

The reason the bill is necessary is that three large freight line companies, TTX (formerly Trailer Train), Railbox, and Railgon filed suit in federal court this year alleging that the tax is discriminatory.

Federal law - namely the Railroad Reorganization and Regulatory Reform Act of 1976, more commonly known as the 4R Act - prohibits discriminatory taxation of any type of railroad transportation property. The companies claim that the current tax is discriminatory simply because freight line companies are the only companies which pay the tax. This argument has been successful in other states.

It is unknown whether the companies argument will be successful in Montana. A decision is pending before federal district court in Billings. If the companies' argument is successful, the state will lose more than one million dollars in general fund revenue for tax year 1991.

If Montana is successful on this issue, it still must justify the tax as nondiscriminatory based on the property taxes other businesses pay. The freight line company tax can not exceed a nondiscriminatory property tax. Therefore, a property tax assessment will still need to be made. Since an assessment still needs to be made, we may as well change to a property tax.

Description

The Freight Line Company License Tax is a 5.5% tax on the gross earnings of freight line companies who provide cars for the transportation of freight across railroad lines within Montana. The tax is in lieu of all other taxes including a property tax and is generally withheld by the railroads and remitted to the state. Deposits of \$1.2 million to the general fund were made in FY 1992.

The annual tax is remitted on or before March 1 of each year by 20 companies, involving 170 taxpayers. A receipt acknowledging payment is sent to each taxpayer.

The costs associated with the processing of payments and issuing receipts are minimal, less than \$500 per year. No other costs are associated with collecting this tax.

Proposal

Montana's taxation method would be similar to the method used by most other states. The department's property assessment division would value the entire fleet of the company, nationwide, and then allocate a portion of that value to Montana. The allocation would be based on the ratio of miles traveled in Montana to miles traveled everywhere.

To determine the taxes owed, the Montana value would be multiplied times the tax rate for railroad and airline property - class twelve property. The rate for class twelve property is a weighted average of the tax rate for commercial and industrial property - 7.53 percent for 1992. The taxable value times the average mill in the state used for motor vehicle fleets (15-23-103) is the actual tax.

The money collected would be deposited to the general fund the same as the freight line license tax is now. In order to prevent any possible loss in general fund revenue, the bill is made retroactive to the 1991 tax year. The companies receive a credit for any taxes paid under the freight line tax.

This program will have an initial cost of approximately \$70,000 in personnel and operating expenses. The ongoing costs will be approximately \$60,000. The department will be required to implement the necessary administrative rules and complete assessments for the 1991, 1992 and 1993 tax years in a very short time frame. The freight line license tax was never fully funded to ensure compliance. It is important for the property tax application to be enforced from its inception.

Future Problems

The railroads and the car line companies have been successful in requiring states to reduce their property taxes based on exemptions for personal property. In a recent Oregon case ACF Industries, a company succeeded in being entirely exempt from all property taxes because of exemptions granted by the state. Oregon is asking the U. S. Supreme Court to review the Ninth Circuit decision.

EXHIBIT 3DATE 7/10/92HB 24

Amendments to House Bill 24
Introduced Copy

Prepared by Department of Revenue
(7/9/92)

1. Page 11, line 5.
Following: "otherwise"
Strike: "taxed"
Insert: "assessed for property taxation"
2. Page 11, line 21.
Following: line 20
Strike: "used outside of the state"
3. Page 13, lines 14 and 15.
Following: "15-16-102"
Strike: "that pertain to time for payment, penalty, and interest for delinquent taxes"
4. Page 13, line 17.
Following: "delinquent"
Insert: "and subject to penalty and interest under that section"
5. Page 14, line 13.
Following: "October"
Strike: "30"
Insert: "31"
6. Page 14, lines 18 and 19.
Following: "payable"
Strike: "as provided in [section 10]"
Insert: "within 30 days after the tax notice is postmarked"
7. Page 15, lines 9 and 10.
Following: "payable"
Strike: "under the provisions of [section 10]"
Insert: "within 30 days after the tax notice is postmarked"

EXHIBIT 4
DATE 7/10/92
HB 24

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

H.B. 24

NAME JACK ETZKORN BUDGET _____

ADDRESS 101 N. WACKER DR., CHICAGO, IL 60606

WHOM DO YOU REPRESENT? ITX COMPANY

SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: SEE ATTACHED

EXHIBIT 4
DATE 7/10/93
HB 24TESTIMONY OF TTX COMPANY
BEFORE THE TAXATION COMMITTEE OF
THE MONTANA HOUSE OF REPRESENTATIVES

ON H.B. 24

JULY 10, 1992, 9:30 A.M.

TTX COMPANY (TTX) is a "freight line company" as defined within the meaning of Section 15-55-101(2), MCA.

Chapter 55 of Title 15, Section 15-55-101, et seq., MCA, requires freight line companies to pay annually a sum in the nature of a tax in the amount of 5.5% of the total gross earnings received by reason of the use or operation of railroad cars in Montana. Section 15-55-101(2) defines a freight line company to be any corporation, other than a railroad, engaged in the business of furnishing or leasing cars for the transportation of freight.

TTX furnishes rail cars to interstate rail carriers for the purpose of providing rail transportation.

Under TTX's car contracts with railroad carriers, the basic terms of which were approved by the Interstate Commerce Commission, all state taxes are paid by the companies as expenses of operation, and such expenses are passed on to TTX's customers, who are operating railroads, by means of the user charges which are determined taking into account all expenses including expenses for state taxes.

The liabilities for TTX under the present tax statutes in

Chapter 55 of Title 15 would be \$761,000 for 1991. Other rail car companies pay lesser amounts ranging to the very insignificant.

The taxation of rail car property in Montana is subject to the provision of Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 54 (Feb. 5, 1976), now codified at 49 U.S.C. Section 11503. The Act is sometimes referred to by the Courts as the "4-R Act."

Section 306 states (in part):

It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

- (a) The assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property.
- (b) The levy or collection of any tax on an assessment which is unlawful under subdivision (a).
- (c) The levy or collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.
- (d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this part.

Section 306 was enacted as part of a comprehensive

Congressional plan to revitalize the nation's railroads and to strengthen the United States transportation system. After more than 15 years of investigation, various Congressional committees and study groups concluded that state tax discrimination against railroad property was pervasive and constituted an undue burden upon interstate commerce; that state laws which guaranteed equal tax treatment for railroad property had not been observed; and that state administrative and judicial remedies had not afforded railroad property taxpayers an efficient and effective means of obtaining relief from discriminatory state taxation. Based upon the recommendations of its committees, Congress established a clear federal policy against discriminatory state taxation of railroad property.

Montana has for many years been involved in recurrent litigation in federal courts because of its various taxation schemes for railroad property. It has been expensive for the State of Montana and the taxpayers. It has resulted in tax receipts considerably lower than anticipated, simply because federal courts have been firm in the enforcement of the Congressional remedies. Past legislatures have taxed railroad property with the expectation of significant gains in tax receipts, only to have those expectations disappointed years later after litigation in federal court was ultimately concluded in favor of the taxpayer.

On March 31, 1992, TTX and other rail car companies filed a

civil action in United States District Court, District of Montana, challenging Chapter 55 of Title 15 which imposes a "gross earnings" tax upon rail car property. That case is Civil Action No. CV-92-28-BLG and is currently awaiting a decision by the Court on a motion by TTX to have the current statute declared to be in violation of Section 306 of the federal 4-R Act.

House Bill 24 is a reaction by the Department of Revenue in anticipation of another adverse ruling by a federal court that a Montana tax statute discriminates against railroad property because that property is not treated in the same manner as other commercial and industrial property in the state.

As its first reaction, the Department of Revenue proposes to cure the defects of the present statute simply by including rail car with other centrally assessed railroad and airline property.

TTX has several concerns with regard to the proposed amendment language and new language in House Bill 24 because the bill as written fails to take into consideration certain significant factors which will again lead to subsequent litigation in the federal courts under the 4-R Act, to the detriment of both the State of Montana and the taxpayers.

Montana statutes taxing railroad property have generated extensive litigation in federal courts because of the preemptive declaration by Congress that all railroad property shall be taxed in a manner consistent and equal to the taxation of other industrial and commercial property. The following areas in House

Bill 24 are some of those that are likely to cause the legislation, as proposed, to be in conflict with the 4-R Act.

1. Retroactivity. Presently rail car company property is taxed under Chapter 55 of Title 55, Section 15-55-101, et seq., MCA. That statute is now under challenge in a pending action in federal court. No ruling has been entered by the court in that case. Consequently, Chapter 55 of Title 15 is currently in effect and applicable. The purport of House Bill 24 is to make the taxation of rail car property retroactive to capture taxation under a new scheme and classification different from an existing Montana law. Whatever might be the motives or intentions of the Department of Revenue, such retroactivity would appear to be illegal under the Montana Constitution and general legal prohibitions against retroactive taxation based on transactions already completed in a prior year.

2. Inconsistent valuation methodology. An examination of Section 15-23-201, MCA, at Section 6 of House Bill 24, shows that centrally assessed railroad and airline property is valued on a number of different and complementary valuation methodologies, for instance, cost method, the stock and debt method, and the income or earning method. On the other hand, new Section 8 of House Bill 24, which applies exclusively to rail car property, limits the assessment methodology for such property only to the cost method. That differentiation in valuation methodology, occurring even within the same classification, could lead to a

substantial over-valuation of rail car property and a possible violation of federal law.

3. Mileage allocations. New Section 9 of House Bill 24 contemplates the allocation of the taxpayer system property to the State of Montana on the basis of car miles traveled within the state to total system car miles traveled, unless the department determines that a different formula should be applied. The legislation, if enacted, should include a proper and fair method for allocation rather than leaving the determination to the Department of Revenue only in the alternative. System mileage formulas do not take into account unique characteristics of a state such as Montana. The mileage allocation formula assumes that all states have similar operations to the system average of operation as to speed of cars, termination and origination activities, storage of cars, and repair and/or bad order of cars. Montana's operations are not typical of other states with respect to such things as the average speed of cars traveling through the state, the great distances within the state, the origination and termination of traffic within the state, the storage of cars within the state, and that nature of Montana as primarily a bridge state for railroad traffic passing through it. This atypical nature of Montana causes a substantial distortion of valuation in the magnitude of four hundred (400%) percent. A distortion of this magnitude would in itself cause a violation of the 4-R Act.

4. Exempt property adjustment. New Section 9, at Subpart (3), recognizes that rail car property is classified differently from other commercial and industrial property in the State of Montana, and it attempts to address that differentiation through the application of an "R" percentage rate. This is at least a recognition of the variations in classification under Montana's taxation scheme for various types of commercial and industrial property. What is not addressed in House Bill 24 is any adjustment for the wide spectrum of exempt property under Montana law. Under Montana law much commercial and industrial property is not taxed at all, for example, commercial and industrial inventories. Nothing in House Bill 24 addresses the equalization adjustment necessary to account for the fair taxation of rail car property relative to exempt personal property.

CONCLUSION

It is clear that House Bill 24 is a premature reaction by the Department of Revenue to pending litigation challenging the current gross earnings tax that is presently applied to rail car property under Section 15-55-101, et seq., MCA. That federal litigation is still pending. The case was only submitted to the U.S. District Court for determination on June 26, 1992. No decision has been announced. No guidance is available at this

time from the Court's opinion with respect to fair and proper taxation of rail cars under the 4-R Act.

H.B. 24, if it speaks to anything, speaks to the Department's recognition that the current taxation of rail cars based upon gross earnings is inadequate and suspect under the 4-R Act. However, to propose a hastily drafted and ill-considered alternative, which itself would raise more problems than it solves, is not the answer.

House Bill 24 is premature. It is flawed, both technically and conceptually. It places the State of Montana at jeopardy because in attempting to solve a \$700,000 tax problem it risks rendering all of Classification 12, applicable to centrally assessed railroads and airlines, in violation of federal law.

The better legislative approach is to wait for the determination of the federal court in the pending case and then, during a session with time to do so, fashion a correction, if necessary, which is addressed exclusively to rail car property and which resolves factors exclusively applicable to rail car property.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - 2nd SPECIAL SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Dan Harrington, on July 16, 1992, at
1:30 p.m.

ROLL CALL

Members Present:

Dan Harrington, Chairman (D)
Bob Ream, Vice-Chairman (D)
Ben Cohen, Vice-Chair (D)
Ed Dolezal (D)
Jim Elliott (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
Marian Hanson (R)
David Hoffman (R)
Jim Madison (D)
Ed McCaffree (D)
Bea McCarthy (D)
Tom Nelson (R)
Mark O'Keefe (D)
Bob Raney (D)
Ted Schye (D)
Barry "Spook" Stang (D)
Fred Thomas (R)
Dave Wanzenried (D)

Members Excused: None

Members Absent: None

Staff Present: Lee Heiman, Legislative Council
Jill Royhans, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion: None

EXECUTIVE ACTION ON HOUSE BILL 24

Motion: REP. COHEN moved HB 24 DO PASS.

Motion/Vote: REP. COHEN moved to amend the bill as per the amendments on the attached standing committee report. He said the amendments are technical in nature.

Dave Woodgerd, Chief Counsel, Department of Revenue, (DOR), said the amendments clarify that the tax is paid for property tax purposes, clarify reporting requirements, and correct some drafting errors in payment dates.

The motion to adopt the amendments CARRIED unanimously.

Discussion: REP. COHEN explained the freight line company license tax is being challenged in court and it is likely DOR will lose the case. DOR maintains that freight line cars should be taxed the same way all other property is taxed in the state. This bill repeals the freight line company tax and taxes the company on their equipment and also imposes a corporate license tax on their profits.

Vote: REP. COHEN'S motion that HB 24 DO PASS AS AMENDED CARRIED unanimously.

EXECUTIVE ACTION ON HB 52

Motion: REP. COHEN moved HB 52 DO PASS.

Discussion: REP. COHEN said it is not necessary to exempt the Class 3 (agricultural land) from the bill. This bill accelerates the 3 year appraisal cycle. The notification process will be simplified and DOR will be better able to implement the reappraisal system

REP. DOLEZAL said he had checked with his County Assessor said the bill is sorely needed. The multiple appraisal notices are very confusing and without the bill "utter chaos" results in the counties. He supported the bill.

Vote: The motion that HB 52 DO PASS CARRIED unanimously.

EXECUTIVE ACTION ON HOUSE BILL 57

Motion: REP. COHEN said this bill changes the statutes relating to the tax appeal process. He presented amendments which clarify the appeal process beginning with the county assessor, proceeding to DOR, and then on to the tax appeal board (Exhibit #1). REP. COHEN moved the adoption of the amendments.

Motion/Vote: The motion to adopt the amendments CARRIED unanimously.

HOUSE STANDING COMMITTEE REPORT

July 16, 1992

Page 1 of 2

Mr. Speaker: We, the committee on Taxation report that HB 24
(first reading copy -- white) do pass as amended.

Signed: San Harrington
San Harrington, Chairman

And, that such amendments read:

1. Title, lines 7 and 8.
Strike: "APPROPRIATING" on line 7 through "TAXATION;" on line 8
2. Page 1, line 22 through page 2, line 1.
Strike: "To" on page 1, line 22 through "1993." on page 2, line 1
3. Page 11, line 5.
Strike: "taxed"
Insert: "assessed for property taxation"
4. Page 11, line 21.
Strike: "used outside of the state"
5. Page 12, line 20.
Strike: "determines that"
Insert: "by administrative rule adopts"
Strike: "should be applied"
6. Page 13, lines 14 and 15.
Strike: "that" on line 14 through "taxes" on line 15
7. Page 13, line 17.
Following: "delinquent"
Insert: "and subject to penalty and interest under that section"
8. Page 14, line 13.
Strike: "30"
Insert: "31"
9. Page 14, lines 18 and 19.
Strike: "as provided in [section 10]"
Insert: "within 30 days after the tax notice is postmarked"

10. Page 15, lines 9 and 10.

Strike: "under the provisions of [section 10]"

Insert: "within 30 days after the tax notice is postmarked"

11. Page 16, lines 10 through 13.

Strike: section 15 in its entirety

Renumber: subsequent sections

Opponents' Testimony:

There were none.

Questions From Committee Members:

There were no questions from the Committee

Closing by Sponsor:

Representative Ream made no closing comments.

HEARING ON HOUSE BILL 24Presentation and Opening Statement by Sponsor:

Representative Ben Cohen, District 3, said HB 24 was requested by DOR. He explained that some are claiming the railroad freight line license tax is illegal under the 4R Act, and that railroads are excluded from corporate license tax. He further explained that the state could lose in a court case.

Proponents' Testimony:

Dave Butcher, Office of Legal Affairs, DOR, said the bill repeals the current freight company tax, and institutes a tax on railroad car companies proposed as class 12 property. He explained that it may include some corporate license tax (Exhibit #14).

Opponents' Testimony:

Mike Greely, GE Capital Railcar Services, told the Committee the bill is so complex, it has not even been gone over with DOR yet (Exhibit #15). He said he is not objecting to the tax the company is paying now, but the new tax amounts to \$31,000 per year, and he objects to the complicated formula and not being able to anticipate tax a tax increase of three to nine times greater.

Mr. Greely advised the Committee that problems in HB 24 relate to HB 44. He commented that one could say the bill is unconstitutional, and there is no retroactive provision on the seven percent surtax in HB 44, but HB 24 is retroactive to 90 and 91, as well as 92. Mr. Greely further advised the Committee that HB 24 repeals gross earnings, and suggested they amend out section 17. He stated that if HB 24 passes railcar companies will probably file litigation.

Robert Edd Lee, TTX Company, told the Committee his company is trying to avoid further litigation, and see legislation passed that they can agree to. He said this is the wrong solution to the problem, made on a study not fully investigated. Mr. Lee suggested the Committee avoid the retroactive nature of the bill,

as existing statute repeals any other tax. He further suggested that the Committee table the bill, to allow time for a workable solution in 93 that is compatible with federal law (Exhibit #16).

Questions From Committee Members:

Senator Towe asked what would happen if the court rules in favor of the freight line companies, and if monies are held by DOR subject to the court's decision. Mr. Lee replied he believes DOR would file and appeal, and reach an adjusted tax number. He stated that if HB 24 is adopted, it would accomplish the very thing they were afraid the court might do.

Senator Towe asked if language should be put in the bill to make it effective upon the court order being final. Mr. Lee replied that would be a good solution.

Senator Towe asked Dave Butcher, DOR, to respond. Mr. Butcher replied he did not see how the companies would have the incentive to pay DOR.

Senator Towe asked if the bill weakens DOR's hands as it is. Mr. Butcher replied that it he believes HB 24 will strengthen DOR's position.

Senator Towe asked about the proposed language change. Mr. Butcher replied he did not believe it would help, since there are three to four years to deal with.

Senator Gage read letters he received from Itel Rail Corporation and GE Railcar Services to the Committee (Exhibits #17 and #18).

Senator Thayer stated that the Committee needs to put language in the bill that the tax can be no greater than what was paid in the prior year. Dave Butcher asked if he were saying that railroad car property would be taxed the same way all other commercial property was taxed in the state.

Chairman Halligan announced that the Committee would work on amending the bill.

Closing by Sponsor:

Representative Cohen commented that the allocation method mentioned in the TTX letter was used successfully in Washington, but House Taxation felt the bill was a good idea to put good-faith pressure on these companies.

EXECUTIVE ACTION ON HOUSE BILL 48Motion:

There was none.

Discussion:

There were none.

Amendments, Discussion, and Votes:

Senator Towe moved to amend HB 48 (Exhibit #12), and asked that the record be clear on the Committee's intent on advertisement of bids. The motion carried unanimously.

Recommendation and Vote:

Senator Towe moved that HB 48 Be Concurred In As Amended. The motion carried unanimously (Van Valkenburg leaving a yes vote). Senator Halligan is to carry HB 48.

EXECUTIVE ACTION ON HOUSE BILL 24Motion:

Senator Towe moved that HB 24 Be Concurred In. He asked that the record clearly reflect that from "number and kind of railroad cars and total number of miles traveled in the state by railroad cars" through "companies" on page 10, lines 13-15, is meant to be the intent of the bill.

Discussion:

There was none.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

Senator Towe's motion carried with all members voting aye, except Senators Harp and Gage who voted no (Van Valkenburg leaving a yes vote).

EXECUTIVE ACTION ON HOUSE BILL 52Motion:

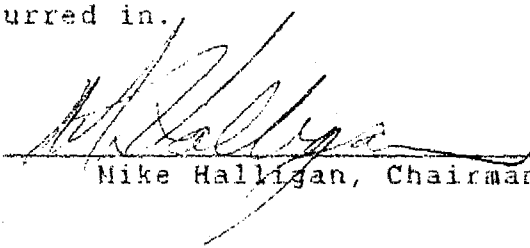
Senator Gage moved that HB 52 Be Concurred In.

SENATE STANDING COMMITTEE REPORT

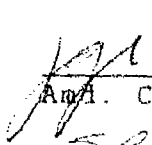
Page 1 of 1
July 17, 1992

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 24 (third reading copy -- blue), respectfully report that House Bill No. 24 be concurred in.

Signed: 

Mike Halligan, Chairman

 7-17-92
Am. Coord.

5B 7-7-92
Sec. of Senate

111711SC.Sji

HOUSE BILL 24

Department of Revenue Explanation
July 9, 1992

Purpose

The purpose of this bill is to repeal the Freight Line Company Tax and have the companies pay the same property taxes and income taxes that other businesses in Montana pay. Freight line companies are businesses, other than railroads, which furnish cars for hauling freight over railways.

Reason

The reason the bill is necessary is that three large freight line companies, TTX (formerly Trailer Train), Railbox, and Railgon filed suit in federal court this year alleging that the tax is discriminatory.

Federal law - namely the Railroad Reorganization and Regulatory Reform Act of 1976, more commonly known as the 4R Act - prohibits discriminatory taxation of any type of railroad transportation property. The companies claim that the current tax is discriminatory simply because freight line companies are the only companies which pay the tax. This argument has been successful in other states.

It is unknown whether the companies argument will be successful in Montana. A decision is pending before federal district court in Billings. If the companies' argument is successful, the state will lose more than one million dollars in general fund revenue for tax year 1991.

If Montana is successful on this issue, it still must justify the tax as nondiscriminatory based on the property taxes other businesses pay. The freight line company tax can not exceed a nondiscriminatory property tax. Therefore, a property tax assessment will still need to be made. Since an assessment still needs to be made, we may as well change to a property tax.

Description

The Freight Line Company License Tax is a 5.5% tax on the gross earnings of freight line companies who provide cars for the transportation of freight across railroad lines within Montana. The tax is in lieu of all other taxes including a property tax and is generally withheld by the railroads and remitted to the state. Deposits of \$1.2 million to the general fund were made in FY 1992.

The annual tax is remitted on or before March 1 of each year by 20 companies, involving 170 taxpayers. A receipt acknowledging payment is sent to each taxpayer.

TESTIMONY OF GE CAPITAL RAILCAR SERVICES

DATE 17 July 92

BEFORE THE TAXATION COMMITTEE
OF THE MONTANA SENATE

BILL NO. HB 24

ON H.B. 24

July 17, 1992

Currently GE Capital Railcar Services pays an annual tax in the amount of 5.5% of the total gross earnings received by reason of the use or operation of railroad cars in Montana under section 15-55-101, et seq. MCA. This amounts to approximately \$31,000 for 1991.

GE Capital Railcar Services has no employees, offices or other facilities within the State of Montana that use state services. Their only connection with the state are the railcars traveling through the state on lease to others, the principal customer being Montana Rail Link.

The Montana Department of Revenue is defending a challenge to the gross earnings tax on railcar companies in Federal District Court, Civil Action No. CV-92-28-BLG. GE Capital Railcar Services is not a party to this litigation because the company considers the current tax reasonable in relation to its activity in Montana.

The Montana Department of Revenue anticipates an adverse ruling in the federal litigation and has introduced House Bill 24 to recapture any lost revenue.

If House bill 24 is enacted, it could be subject to the same challenge as the gross earnings tax.

The valuation methodology in House bill 24 is vague and could have the affect of overvaluing the cars GE Capital Railcar Services actually runs through the State of Montana. There are no provisions for depreciation rates

on the cars, no idle car allowance is provided, and the ultimate tax rate is uncertain. There is potential for the applied formula to have unequal impacts on the various railcar companies. GE Capital Railcar Services estimates that their tax liability under House Bill 24 could increase three to eight times the current yearly amount paid.

GE Capital Railcar Services and other railcar companies are willing to discuss with the Montana Department of Revenue a system of taxation that would be fair to all railcar taxpayers. This should take place before the 1993 Legislature meets so appropriate legislation can be considered in that session.

House Bill 24 is a hastily conceived attempt to provide tax revenue. It too, could be subject to costly litigation and delay. In order to guarantee a fair tax on the railcar companies they should have an opportunity to contribute to the fashioning of a fair tax method during the regular session. Consideration can then be given to the unique nature of railcar property.

*Sub by Sen Gage
1:45 pm*

SENATE TAXATION

EXHIBIT NO.

17

DATE

17 July 92

BILL NO.

H524

ITEL

Itel Rail Corporation

550 California Street
San Francisco, CA 94104
(415) 984-4200

July 16, 1992

Senator Delwyn Gage
State Capitol
Helena, MT 59620-1702

Re: House Bill No. 24
52nd Legislature
Special Session 7/92

Dear Senator Gage:

We have been advised that House Bill No. 24 has been introduced during the current special legislative session which proposes to tax railroad car companies differently than they are currently taxed under the Gross Receipts tax. Itel Rail Corporation strongly objects to House Bill No. 24.

First, this bill is intended to be retroactive which in itself raises some constitutional issues. We have conducted business and entered into contractual agreements based upon certain tax assumptions. We have paid the 1991 Gross Receipts tax as required by Montana law and consider the 1991 tax year closed.

Second, the provisions of this bill are vague and the administration of the tax by the department of taxation would be subjective in nature. In determining the allocation of our movable property the miles-to-miles formula does not accurately depict Itel Rail's physical presence in the state. Montana is a bridge state so a straight miles-to-miles allocation formula would greatly overstate our presence in the state for business and tax purposes.

Because of the magnitude and complexity of this tax issue and the significant impact a bill of this nature would have on the railroad car company industry, we feel that the industry should be allowed to express its concern as well as input in drafting a bill that would be fair to all prior to the 1993 regular legislative session.

ITEL

Senator Delwyn Gage

July 16, 1992

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Itel Rail Corporation requests that House Bill No. 24 be defeated during this special session. If it is passed with its current provisions, it would very likely end up the subject of litigation as violating the Railroad Revitalization and Regulatory Act of 1976.

I respectfully request your consideration in this matter.

Sincerely Yours,

A handwritten signature in cursive script that reads "David R. Wood".

David R. Wood

Director of Property Taxes

and Insurance Administration



sub by Sen Gage
1:45pm

GE Capital
Railcar Services

Michael S. Magnuson
Tax Manager

General Electric Railcar Services Corporation
A unit of General Electric Capital Corporation
33 West Monroe St., Chicago, IL 60603
312 853-5165
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SENATE TAXATION

EXHIBIT NO. 18

DATE 17 July 24

BILL NO. HB 24

July 16, 1992

Senator Delwyn Gage
State Capital
Helena, Montana 59620-1702

Re: House Bill 24

Dear Senator:

GE Capital Railcar Services Corporation (GE Railcar) opposes passage of HB 24 in its present form. The measure is designed to be "revenue replacement" but GE Railcar's \$30,000 current tax bill would increase to \$260,000.

We urge you to delay passage of this bill to would allow taxpayers a chance to forge a more workable statute with the Department of Revenue.

If delay is impossible, the points below should be added to the bill to make the impact tolerable and place the bill more in line with the 4R Act.

1. Retroactive application - The ability of the State to obtain additional 1991 taxes is both questionable constitutionally and patently unfair to taxpayers. Since retroactivity is focused on rail property, the statute would likely run afoul of the 4R Act which precludes discriminatory taxation of rail property. The statute should be prospective.
2. Allocation Method - Montana Taxable Value
 - a. Miles-to-Miles Allocation Method - Montana represents what is termed a "bridge" state, i.e. most railcars roll through the state without stopping at a Montana destination. GE Railcar has 1.4% of its miles in Montana, yet the time its cars actually spend in Montana is substantially less.
 - b. Speed Factor - A minimum speed factor of 200 miles per day should be provided to recognize Montana's bridge state status. Further, a taxpayer should be allowed to increase the miles per day above 200 by presentation of evidence to the DOR.
3. Cost Method - HB 24 determines taxable value using the Cost of property while most states use the Depreciated Cost Method. We believe a depreciated cost method is more appropriate.

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4. Availability of Other Valuation Techniques - Taxpayers should have the ability to utilize other generally accepted valuation techniques such as the income approach or discounted cash flow. Allowances for idle cars and other types of obsolescence should be provided.
5. Administrative Authority - HB 24 grants the Department of Revenue far too much authority to prescribe rules, rates and methodology. The statute should specify methods and rates to keep the legislative process out of the hands of bureaucrats.

We strongly urge you to delay or defeat the passage of this bill.

Respectfully submitted,



Michael S. Magnuson
Manager, Corporate Taxes

MM/pq